

# AVERY COUNTY CELL TOWER REGULATION ORDINANCE

## Avery County, Newland N.C.

### **Article I**            **Purpose and Legislative Intent.**

The purpose of this *Wireless Cell/Telecommunications Ordinance* is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Avery County have reliable access to telecommunications networks and state of the art mobile broadband communications services while also minimizing adverse impacts created by wireless facilities and structures. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable federal and state laws, including without limitation Section 6409 of the Federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455(a) and NCGS 153A.

- A. Minimize external impacts (i.e. visual impacts and generator noise) on surrounding areas.
- B. Encourage cooperation among carriers and joint use of new and existing wireless structures in an effort to minimize the necessity for new structures.
- C. Encourage use of existing buildings and suitable alternative structures for wireless facility use in an effort to minimize the number of new structures.
- D. Encourage concealed wireless structures.
- E. Encourage concealed antenna designs.
- F. Encourage concealed cables and feed lines.
- G. Minimize visual impacts on major mountain ridges to the greatest extent possible.

**Article II Definitions:** For the purpose of this ordinance, the following definitions apply:

**Accessory Equipment:** Any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment building, cabinets and storage sheds, shelters or similar structures.

**Administrative Approval:** Approval that the administrator or designee is authorized to grant after administrative review.

**Administrative Review:** Non-discretionary evaluation of an application by the Administrator or designee. This process is not subject to a public hearing. The procedures for the administrative review are established in Section IV of this Ordinance.

**Administrator:** The person or persons assigned by the Board of Commissioners to enforce this ordinance.

**Antenna:** Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

**Base Station:** A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas coaxial cables, power supplies and other associated electronics.

**Carrier on Wheels or Cell on Wheels (COW):** A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A "COW" is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

**Co-location:** The placement or installation of multiple wireless equipment/carriers on existing structures, including cell towers, electrical transmission towers, water towers, building or other structures capable of structurally supporting the attachment of additional wireless equipment or antenna's in compliance with all federal, state and laws and ordinances.

**Commercial or Industrial Area:** A parcel of land on which commercial or industrial activities already exist, and is a proposed site for a wireless telecommunications tower to be erected. The site may be allowed to erect the telecommunications tower with the fall zone requirement to be enforced on all habitable structures (buildings) and public roads or highways.

**Concealed Wireless Facility:** Any wireless facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.

**Electrical Transmission Tower:** An electrical transmission structure used to support high voltage overhead power lines. The term *shall not* include any utility pole.

**Eligible Facilities Request:** A request for modification of an existing wireless tower or base station that involves co-location of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

**Equipment Compound:** An area surrounding or near the base of a wireless support structure within which are located wireless facilities.

**Existing Structure:** A wireless support structure, erected prior to the application for an eligible facilities request, co-location or substantial modification under this ordinance that is capable of supporting the attachment of wireless facilities. The term includes, but is not limited to, electrical transmission towers, buildings and water towers. The term shall not include any utility poles.

**Fall Zone:** The fall zone area beneath a telecommunication tower shall be 1.25 times the height of the tower. There shall be no habitable structures, public roads or highways allowed within the fall zone setback circle. All new cell towers shall comply with the fall zone setback requirements as of the date of adoption of this Telecommunication Tower Ordinance. The "fall zone" setback shall be located within the property boundaries to the proposed telecommunication tower site plan. Any overlapping setback to adjoining property owners shall only be allowed by the variance process to applicant's permit application.

**Major Mountain Ridge:** A ridge with an elevation higher than 3500 feet above mean sea level and an elevation 500 feet or more above the elevation of an adjacent valley floor including all land within 100 feet horizontally below peak or highest elevation of any portion of such line or surface along the crest.

**Maximum Height of Telecommunication/Cell Tower:** Telecommunication towers Shall Not be constructed over a maximum height of one hundred and ninety two (192') feet.

**Monopole:** A single freestanding pole-type structure supporting one or more antennas. For the purpose of this ordinance, a monopole is not a tower or a utility pole.

**Ordinary Maintenance:** Ensuring that wireless facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a wireless

support structure's foundation or of the wireless support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing equipment compound and relocating the antennas to different height levels on an existing monopole or tower upon which they are currently located. Ordinary maintenance does not include substantial modifications or the addition of a new provider's equipment.

**Public Roads and Highways:** Public roads and highways are defined as State or Federally maintained roads that are within the non-incorporated boundary of Avery County. Municipal and town maintained roads or streets shall fall under the authority of the municipality and the local government unit having jurisdiction.

**Replacement Pole:** Pole of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support Wireless facilities or to accommodate co-location. This requires removal of the wireless support structure it replaces.

**Substantial Modification:** The mounting of a proposed wireless facility or wireless facilities on a wireless support structure that substantially changes the physical dimensions of the support structure. Additional wireless facility mounting equipment will be a substantial modification if it meets any one or more of the following criteria:

- (1) Increased the existing vertical height of the wireless support structure by (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.
- (2) Any equipment that will add any appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty (20) feet or greater than the width of the wireless support structure at the level of the appurtenance and/or which is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable).
- (3) Increase the square footage of the existing equipment compound by more than 2500 square feet additional structural load.

**Telecommunication Tower and/or Cell Towers:** All Telecommunication Towers and Cellular Communication Towers shall be engineered structures of which the maximum height is regulated by the Avery County Cell Tower Regulation Ordinance.

**Utility Pole:** A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric co-operative that is designed specifically for and used to carry lines, cables or wires for telephone, cable television or electricity or to the point of service.

### **Article III                      Permitting Cell Tower:**

**Content of Permit Application Package:** All permit application packages must contain the following:

- (a) ***Site Development Plan:*** A site development plan prepared by a N.C. Registered Land Surveyor containing the following:
- (i) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number and their addresses, scale, north arrow, vicinity map, tax parcel identification number and the tower's latitude and longitude coordinates.
  - (ii) The name, address, signature and seal of the surveyor preparing the site development plan.
  - (iii) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall zone.
  - (iv) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
  - (v) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
  - (vi) All existing towers on the property or any towers whose fall zone encroaches onto the property.
  - (vii) The proposed tower's location, the proposed fall zone and the location of all support structures and guy line anchors.
  - (viii) The ground elevation (MSL) of the proposed tower's base, all

- (viii) The ground elevation (MSL) of the proposed tower's base, all proposed support structures, or property corners or a permanent site bench mark. All elevations shall be determined using the most recent available datum.**
- (ix) All proposed access roads, easements or right-of-ways on or to the site and including any adjoining property easement within the tower fall zone.**

#### **Article IV                      Engineered Design:**

**Preliminary Design Plan: A preliminary tower design plan prepared by a N.C. Registered Engineer which shall contain the following:**

- (i) The applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.**
- (ii) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.**
- (iii) A plan showing the base of the tower and the foundation for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.**
- (iv) A tower elevation showing the proposed mounting and placement of all proposed antennas and other appendages.**
- (v) An elevation of each proposed set of guy line anchors.**
- (vi) The proposed tower design loads.**
- (vii) A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.**
- (viii) Fencing shall be a minimum of 8 feet in height and be of the 2 inch woven wire type. Razor wire optional on top.**

**Wireless support structures shall be subject to the following:**

- (i) Shall be engineered and constructed to accommodate a minimum number of collocated antennas mounted onto the cell tower and based upon the cell towers constructed height as follows:
  - 1. Support structures sixty (60) to one hundred (100) feet shall support at least two (2) additional telecommunications providers.
  - 2. Support structures greater than one hundred (100) feet but less than one hundred-fifty feet (150) shall support at least three (3) additional telecommunications providers.
  - 3. Support structures greater than one hundred-ninety two (192) feet in height shall support at least four (4) additional telecommunications carriers.
  
- (ii) The equipment compound area surrounding the wireless support structure must be of sufficient size to accommodate accessory equipment for the appropriate number of telecommunications providers.

**Article V                      FAA & FCC COMPLIANCE:**

***FAA & FCC Compliance Statements:*** The applicant shall provide written statements from the Federal Aviation administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.

***Fees:*** The total fees for reviewing a non-administrative permit application shall be in accordance with the fee schedule as set by Avery County Applications for new wireless support structures with proposed wireless facilities shall be considered together as one application requiring only a single application fee.

Concealed wireless facilities shall be designed to accommodate the collocation of

other antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

**Setbacks:** Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone. Property located within the tower's fall zone will not be subdivided as long as the tower is standing.

**Height:** Wireless support structures shall not exceed a height equal to one hundred and ninety two feet (192') from the base of the structure to the top of the highest point, including appurtenances.

**Aesthetics:**

- (a) **Lighting and Marking:** Wireless facilities or wireless support structures shall not be light or marked by beacons unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (b) **Signage:** Signs located at the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which wireless facilities are located (e.g., approved signage at locations on which concealed facilities are located).
- (c) **Structure:** Towers shall be blended with the natural surroundings as much as possible. Colors and materials (gray, green, brown or earth tones) shall be used that are compatible with the surrounding area, except when otherwise required by applicable Federal or State regulations. The tower and equipment shall be located, designed and/or screened to blend with

(d) the existing natural or built surroundings to reduce the visual impacts as much as possible and to be compatible with neighboring land uses and the character of the community.

(9) ***Accessory Equipment***: Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or wireless support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

(10) ***Fencing***: Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than eight (8) feet in height.

#### **Article VI            Territorial Jurisdiction**

The provision of this Ordinance shall apply to all unincorporated areas within the geographic confines of the County of Avery, and to such incorporated areas that by resolution of their Town Councils adopt the **Avery County Cell Tower Regulation Ordinance** to be applicable within such incorporated areas.